IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7365 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMESHBHAI KHODABHAI PASSHALA

Versus

STATE OF GUJARAT

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Appearance:

MR GM JOSHI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. The petitioner is a trader carrying on business in the name and style of Gayatri Oil Depot at Surat. On 28th May 1993, the District Supply Officer inspected the premises of the petitioner and seized 151 tins of oil. Thereafter on 31st May 1993 the Collector, Surat passed

an order for confiscation of the said oil tins. Against the said order the petitioner preferred an appeal before the Appellate Authority. In the meantime the petitioner has approached the office of the Collector for return of his Books and Registers which were seized by the District Supply Officer. However, the same was not returned to the petitioner on the ground that the appeal is pending before the appellate authority. Subsequently on 28th August 1995 the petitioner was informed that all the books and the registers of the petitioner have been lost and they will be given back if the same are found by the authority. On 23rd August 1996 the petitioner's appeal was dismissed and therefore the present petition has been filed.

2. The case of the petitioner is that non-availability of the documents seized by the authority, the petitioner could not defend his case properly and such situation has arisen only because of the fault on the part of the authority. According to the petitioner, only on the basis of octroi receipts the authorities have presumed that the petitioner has imported oil, which is illegal and erroneous.

3. Mr. Joshi, learned Advocate for the petitioner has stated that the petitioner has already closed his business, but the order of both the authorities cast a stigma on the petitioner. He, therefore, submitted that without entering into the merits of the matter, the order of confiscation may be converted into a penalty.

3. Prima facie it is clear that the order of confiscation is passed only on the basis of the octroi receipts. Moreover, the petitioner was unable to defend his case because the non-availability of the books and registers. The Supreme Court in the case of N.Nagendra Rao & Co. Vs. State of A.P., reported in AIR 1994 SC 2663, it is held that a trader indulging in black-marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list, etc. or even discrepancies in stock. Therefore, looking the particular facts and circumstances of the case there is sufficient justification to cancel the confiscation and treat the amount recovered by the authority as penalty.

4. In the premises aforesaid, the petition is partly allowed. The impugned orders passed by the authorities below are modified to the extent that the amount received by the authority may be treated as penalty imposed upon

the petitioner instead of confiscation. Rule is made absolutely to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]
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